1. S.B. Civil Misc. Appeal No.121/2006

The State of Rajasthan and others.
vs.
M/s. Master Construction and another.

2. S.B. Civil Misc. Appeal No.122/2006

The State of Rajasthan and others.
vs.
M/s. Master Construction and another.

Date : 11.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RPS Choudhary, AAG, for the appellants.

Mr. JK Chanda, for the respondent no.1.

Mr. L Pareek for Mr.RK Salecha, for respondent no.2 Bank.

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Heard learned counsel for the parties.

These two appeals are arising out of two orders dated 11.8.2005 passed by the District Judge, Jodhpur in two applications filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996'). By the impugned orders, the trial court restrained the appellant State Government from invoking the bank guarantee given by the respondent for Rs.11,65,956/- in one work contract and Rs.14,85,425/- in another work contract.

It appears from the impugned orders dated 11.8.2005 that the trial court in both the cases after observing that there is a dispute with respect to the work given by

contract executed between the parties and there is an arbitration clause and after observing so, the trial court straightaway granted injunction against the appellant against invocation of bank guarantee of the aforesaid amounts.

It appears from both the orders that the court below has not even cared to look into the genuineness of the claim of the parties so as to find out whether there is any prima-facie case in favour of grant of injunction. The court below further failed to note that in the entire application under Section 9, there is not a single word for establishing case for grant of injunction much less a line for establishing the claim for grant of injunction, that too against invocation of the bank guarantee. Even it is not the case of the applicant/respondent in its application that in case the injunction will not be granted, he may suffer any loss much less any irreparable loss. The Court below even not dared to look into the fact which is not being disputed by learned counsel for the respondent that in these two contracts, the work has not been started by the respondent contractor despite the fact that the work order was awarded as back as on 24.2.2003 and contract was terminated by the respondent after more than one year i.e. 23.4.2005.

Learned counsel for the appellant submitted that no injunction could have been granted by the court below against invocation of the bank guarantee even if there is a dispute raised by the contractor and he moved petition for

appointment of the arbitrator. Mere moving application for appointment of arbitrator or in anticipation of moving application for appointment of arbitrator if an injunction application is filed under Section 9 of the Arbitration Act, then that application must be self contained and must make out a case for grant of injunction. In this case, the respondent has not started the work even after getting the work order in the year 2003 in relation to the work for canal ling. It is also submitted that there is no material available on the record which can justify grant of injunction in favour of the respondent.

Learned counsel for the respondent vehemently submitted that the respondent submitted an application for appointing Adjudicator upon which the State itself appointed Adjudicator who opined that some work was required to be done by the State department but that report has not been provided to the respondent. It is also submitted that unless the work is completed by the appellant State through its department, the work could not have proceeded or even could not have started by the respondent. It is also submitted that even after the order dated 11.8.2005, the respondent invoked the bank guarantee and recover the amount of bank guarantee and the appellant has already moved a petition before the Consumer Forum at Mumbai. It is also submitted that now the Arbitrator has been appointed by the Jaipur Bench of this Court in the petition filed by the respondent. In view of this, this Court may not interfere with the injunction order passed by the court

below. It is also submitted that the facts justify the stand of the respondent of not starting the work.

I also considered the above submissions of learned counsel for the respondent.

As observed above, it is clear that the orders passed by the court below dated 11.8.2005 are no orders in the eye of law because the court below has not applied its mind on the issues on which the court was required to address itself. It is apparent from the orders dated 11.8.2005 that the court below has passed the two orders without any reason. The orders are non-speaking as well as by ignoring the basic principle of law that ordinarily injunction is not granted against invocation of the bank guarantee. Here in this case, it appears that the court below has not looked into the injunction application before granting injunction.

Apart from the above, even if the contention of the respondent is accepted as submitted, then it is a case of dispute between the parties in relation to the contract for which two guarantees were given by the respondent/ contractor in furtherance to the contract awarded to the respondent – one bank guarantee for work performance and another for mobilization. Admittedly, the work has not been started by the respondent after getting the work order in 2003 till it was canceled in the year 2005. Apart from it looking to the total work, which according to the respondent it has completed in relation to 5 contracts

under which it has to complete work of 96 kms., he has completed only work of 10 kms. in 2½ months and by that, the respondent cannot claim any justification for not doing the works under these two contracts for which it has given bank guarantees for performance as well as mobilization.

Neither there is prima-facie case for grant of injunction nor the respondent can suffer any irreparable injury in case, it is to pay Rs.11,65,956/- in one contract and Rs.14,85,425/- in another contract where the work contract is running for more than Rs.2 crores in each case.

In view of the above discussion, both these appeals deserve to be allowed, hence, allowed, the orders dated 11.8.2005 are set aside and the injunction applications filed by the appellants are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya